

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:04-CR-294-R</b>
	)	<b>No. 3:06-CV-1426-R</b>
<b>ROBERT TROY SLADE</b>	)	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b) and an Order of the United States District Court for the Northern District of Texas, this case has been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the magistrate judge are as follows:

Robert Troy Slade (“Movant”) seeks to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Movant is a federal prisoner currently incarcerated in a federal correctional institution. Respondent is the United States of America (“Respondent”).

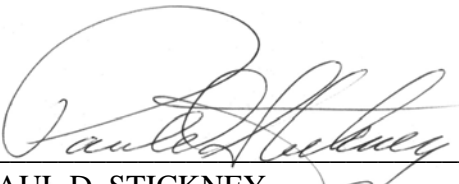
**Background**

It has come to the Court’s attention that due to no fault of Movant, an indigent who brought an appeal in good faith, Movant’s direct appeal was dismissed, his appellate counsel requested that he be allowed to withdraw, new appellate counsel was not appointed to represent Movant on appeal, and Movant was erroneously denied a transcript and record on appeal at government expense. This Court has vacated its order denying the transcript and record on appeal at government expense, ordered that the transcript and record on appeal be provided at government expense, and appointed the Federal Public Defender to represent Movant.

**Recommendation**

Because Movant is not permitted to have a § 2255 motion pending during a direct appeal,<sup>1</sup> the Court hereby recommends that Movant's § 2255 motion be dismissed without prejudice to refiling, that the statute of limitations be stayed effective the date the § 2255 motion was filed, and that if the § 2255 motion is refiled, that the new motion not be deemed a second or subsequent § 2255 motion.

Signed, November 15, 2006.

  
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PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> See *USA v. Fantozzi*, 90 Fed. Appx. 73, 74, (2004 LW 524676 at \*\*2 (5th Cir. 2004) (§ 2255 during pending direct appeal should be denied w/o prejudice).

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a true copy of these findings, conclusions and recommendation on the parties. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions and recommendation must serve and file written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. A party's failure to file such written objections to these proposed findings, conclusions and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 472 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

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PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE